UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
NORTHWESTERN CORPORATION,	.	Case No. 03-12872(JLP)
Debtor.	.	May 3, 2005 (9:32 a.m.)
	.	(Wilmington)
IN RE:	.	Chapter 11
NETEXIT, INC., f/k/a EXPANETS, INC., et al.,	.	Case No. 04-11321(JLP)
Debtor.	.	May 3, 2005 (9:32 a.m.)
	.	(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN L. PETERSON
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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THE CLERK: Please rise. The United States Bankruptcy Court for the District of Delaware is now in session. The Honorable John L. Peterson presiding.

THE COURT: Please be seated. Let's take up Netexit first. There's a mike there.

MS. DENNISTON: Good morning, Your Honor. Karol Denniston on behalf of Netexit. On the agenda this morning -- all of the matters, I will advise the Court, are being continued. The first matter, the motion for order regarding a disclosure statement has been continued pending the mediation which is scheduled in June. Matter number 2 is the motion to allow the Chicago Regional Counsel of Carpenter's Pension Fund and to file a late filed claim. This matter has been resolved by stipulation. I'd like --

THE COURT: I think I signed an order this morning.

MS. DENNISTON: Again, I have not seen the order, Your Honor, but thank you. Matter number 3, the Court has entered the order on the motion to compel reimbursement of amounts paid by the Netexit debtors. And then matter number 4 is the debtor's motion for a TRO and preliminary injunction staying petition before the Office of Administrative Trials and Hearings, and this matter is under advisement with the Court, and those are the only matters pending on the Netexit docket.

THE COURT: We'll have an order out on the

comptroller's case probably by Wednesday.

MS. DENNISTON: Thank you, Your Honor.

THE COURT: Now, we'll pick up the agenda on Northwestern Corporation.

MR. AUSTIN: Your Honor, for the record, I'm Jesse Austin on behalf of Paul Hastings Janofsky & Walker as lead bankruptcy counsel for Northwestern. We have a number of matters on the agenda today subject to the Court's predisposition. I'd ask Ms. Denniston to go through this agenda to advise the Court as to the matters which at least from the debtor's perspective still appears to be active and will require some direction from the Court and also those matters which may otherwise either be resolved or to carry over to the next hearing date.

THE COURT: All right.

MS. DENNISTON: Your Honor, we'd like to run through the agenda and then we'd come back to those matters that are contested or will require a hearing. The fee applications of Graves, Law Debenture, and Paul Hastings will be going forward today. We would note for the Court that as to Law Debenture, we think it would be efficient to tie it to matter number 14 which is the administrative claim filed by Law Debenture when the Court hears that matter so both can be addressed at the same time.

THE COURT: They just filed another reply of

thirty-some pages, and I signed the order this morning authorizing that reply to be filed by Law Debenture.

MS. DENNISTON: We received those papers, Your Honor, and have reviewed that reply.

THE COURT: All right, we'll just hold all of these fee matters until the end.

MS. DENNISTON: Thank you, Your Honor. Matter number 2 is the motion to is the motion to approve the memorandum of understanding. We'd ask that that be continued to the next omnibus hearing date, but we would note for the Court that we do not have a calendar for the next hearing date. Matter number 3 --

THE COURT: I don't know if you're going to have a judge either. We're getting that decided this week.

MS. DENNISTON: All right, Your Honor. Thank you. Matter number 3 is the omnibus motion for Court approval to assume certain executory contracts pursuant to § 365, and we'd ask that that be continued to the next omnibus hearing date. Matter number 4 is the motion pursuant to 105(a) and 363 of the Bankruptcy Code authorizing the debtor to terminate certain non-qualified retirement plans. We'd ask that that be continued to the next hearing date. Matter number 5, Your Honor, is the debtor's tenth omnibus objection to claims pursuant to 11 U.S.C. 502(b) and 510(b). We note for the record that these are equity claims that no responses

have been filed, and we would ask that the Court enter an order at this time.

THE COURT: Well, I read the omnibus objections over and there are no responses. I think they're all taken care of by the terms of the plan or by further action by payment. Go on to number 6.

MS. DENNISTON: Okay. Number 6 is the same thing, Your Honor. This is the debtor's eleventh omnibus objection pursuant to 502(b) and Bankruptcy Rule 3007. There were no supporting documentation provided with the claims. No responses were filed to the debtor's claim objection. We'd ask for an order at this time.

THE COURT: All right.

MS. DENNISTON: And I have forms of order which we can hand up, Your Honor. Number 7 is the debtor's objection of claims of Barry Stefan and Donna Stefan pursuant to 11 U.S.C. 502(b) and Federal Bankruptcy Rule of Procedure 3007. Again, these are equity claims, Your Honor. No responses have been filed, and we'd ask that they -- an order be entered. Same thing for number 8, Your Honor. That's the debtor's objection to administrative claim of House of Glass. This is an administrative claim that there were -- is inconsistent with the debtor's books and records. The debtor did file an objection and no response was received. Matter number 9 is the debtor's objection to the administrative

claim of Don Oberlander. This is an administrative claim. We filed an objection, Your Honor. There was no response received, and we'd ask that the order be entered. And matter number 10 is the debtor's fourteenth omnibus objection pursuant to 11 U.S.C. 502(b) and Federal Bankruptcy Rule of Procedure 3007. This was a late-filed claim. We filed an objection. No response was received, and we'd ask that the order be entered at this time.

THE COURT: Very well.

MS. DENNISTON: If I could approach with the orders, Your Honor. Matter number 11, Your Honor, is the motion for order declaring the automatic stay to be inapplicable. This is in connection with the Worker's Compensation claim. That matter has been continued as has matter number 12 and matter 13. All three of those matters are related. Those matters are subject to a settlement stipulation that's being finalized. We'd ask that these be continued to the next omnibus hearing. Matter 14 is the matter I referred to earlier. This is the request for administrative expenses filed by Law Debenture. It is going forward today. Matter number 15 is the COBRA motion where the Court has entered the order so that can be vacated. Matter number 16 is Richard Hylland's cross-motion for order confirming that the supplemental income security plan is an obligation of the reorganized Northwestern. At the last

hearing, Your Honor, the Court advised that it would be entering an order as to what it was going to be hearing today, unless we may have misunderstood, but we're prepared to proceed on the cross-motion but not the substantive claim objection if the Court wishes to have that hearing today.

THE COURT: Well, let me ask this: How does this objection relate to Judge Barron's decision that all these matters be sent to arbitration.

MS. DENNISTON: The arbitration, Your Honor, addresses the employment contract and the claims that were pled by Mr. Hylland in connection with the employment contract. The debtor in the plan in the confirmation order reserved the jurisdiction of the Court as to those claims that were filed, and there were separate claims filed by Mr. Hylland on the -- what we call the non-qualified plans that were not part of the arbitration claim when he submitted the arbitration claim to the arbitrator. And because those plans are group plans, the debtor has taken the position that this Court is the proper forum for those plans to be addressed.

MR. DEMMY: Your Honor --

THE COURT: Yes.

MR. DEMMY: May I be heard on that point?

THE COURT: Please take the --

MR. DEMMY: Thank you, Your Honor, good morning. John Demmy on behalf of Mr. Hylland. I take exception to the

position that the debtor is taking with respect to whether or not Mr. Hylland's underlying claim relating to the SISP plan not being part of the arbitration. We believe that it is because the SISP plan is one of the benefit plans to which Mr. Hylland is entitled under his employment agreement with Northwestern. It is Mr. Hylland's claims under the employment agreement which were demanded in the arbitration that are going forward in the arbitration. It's our position that all of those claims, including the extent to which Mr. Hylland has an SISP claim, i.e., the amount of that claim, is included in the arbitration demand, is going forward in arbitration. Your Honor, the cross-motion that we filed to the debtor's motion raises a legal issue for the Court, and it relates to the debtor's attempt to have this Court rule on the debtor's request to terminate that plan. We believe that that is not something for this Court because that plan passed through the bankruptcy for the reasons set forth in or papers. I'm not going to argue the merits, I just wanted to outline that for the Court. We believe it's an obligation of the reorganized debtor which we believe is a legal issue perhaps apart from the underlying claim relating to the SISP if the debtor wishes to terminate that plan under applicable non-bankruptcy law, which we do believe is part of the arbitration demand which demanded that the arbitrator deal with all of Mr. Hylland's employment agreement claims, the

employment agreement includes the SISP claim. That's our position, Your Honor.

THE COURT: Counsel.

MS. DENNISTON: Your Honor, the debtor set out its position to Mr. Hylland's cross-motion in a written objection. Basically, the argument's very simple, is that we believe that Mr. Hylland and his counsel are incorrectly reading the language of the plan of reorganization, that the plan of reorganization had expressed provisions in it that permitted the termination -- the post-effective date termination of the specific plan, and that, as such, that the motion should be denied. If the Court wants us to walk the Court through the objection, I'm happy to do that, but we --

THE COURT: I read it over and it weeds through all of the problems that are going arrive with regard to termination of these non-qualified plans relative to the plan provisions and I think the Court's jurisdiction. So, and I'm going to rule on it, but I do want all the rest of the matters to go to arbitration. I don't see how you want to fracture these away and not get the whole thing done in arbitration.

MS. DENNISTON: But for the fact, Your Honor, that these non-qualified plans involved other participants in addition to Mr. Hylland, I'm not sure that the debtor would not be in agreement with the Court on that, but because they

are group plans and because of the Bankruptcy Code's need to treat those claimants the same, we do believe that this is subject to this Court's jurisdiction and because of the issues that require the interpretation of the confirmation order believe that this is the proper court for the adjudication of Mr. Hylland's rights under the SISP.

THE COURT: Do you want to reply?

MR. DEMMY: Are we into the merits of the motion, Your Honor?

THE COURT: Yes.

MR. DEMMY: Okay. Your Honor, we did not get a chance to respond to the objection. I suppose we could have filed a reply, but I didn't think it was necessary. I think we can handle that in the argument here. Your Honor, Northwestern filed its motion to terminate the SISP plan on January 13 of 2005, this year. The second amended plan was confirmed by order dated October 19. On November 1, the plan went effective. On December 29, there was a notice filed regarding the substantial consummation of the plan. In the debtor's motion, the authority they cite for their ability to terminate the plan is § 9.2 of the plan itself, not anything in the plan of reorganization, and also § 105 of the Bankruptcy Code. Your Honor, we don't believe that the SISP plan is governed by § 8.6 of the plan. 8.6 deals with retiree benefits. Your Honor, retiree benefits is something

that's dealt with in the Bankruptcy Code at § 1114. The definition of retiree benefits as included in the plan of reorganization, which is what 8.6 deals with, tracks almost word for word, with some immaterial changes, the definition of retiree benefits included in § 1114 of the Bankruptcy Code. Your Honor, I have a one-page chart which just makes that comparison which I'd like to hand up for Your Honor's convenience.

THE COURT: That would be fine. Thank you.

MR. DEMMY: The first thing I would like to do, Your Honor, is point the Court's attention to § 8.6 of the plan, and I do have a copy of the plan if the Court would like it, but basically, 8.6 says, and I'm quoting from the plan, "Payment of any Retiree Benefits" -- and that's in capital letters -- "as such benefits may have been modified during the Chapter 11 case shall be continued solely to the extent and for the duration of the period the debtor is contractually or legally obligated to provide such benefits, subject to any and all rights of the debtor under applicable law including without limitation the debtor's right to amend or terminate such benefits prior to or after the effective date." And that's the language that the debtors are seizing upon, Your Honor. I would suggest, first of all, that there can't be a provision like this which allows the debtor at any time after the effective date to take this kind of an action.

What in effect the debtor is saying, Your Honor, is, Well, we haven't terminated this plan as of the effective date. We haven't terminated it as of substantial consummation of the plan, but a year from now, five years from now, twenty years from now, a hundred years from now to take it to its ludicrous logical end result, we could come back, terminate this plan, do it under the authority they believe of the Bankruptcy Court in this case and turn the claims, a hundred years from now into Class 9 claims under the plan of reorganization. Clearly, that's an absurd result, Your Honor, and there has to be a limitation on that provision in 8.6. I suggest to the Court that that limitation is set forth in the Bankruptcy Code, specifically the provision that says that you cannot modify the plan after substantial consummation of the plan which occurred well prior to the time that the debtor filed its motion. But beyond that, Your Honor, we don't believe that 8.6 applies here because, as I said, I think that 8.6 really deals with retiree benefits, which is a special animal under the Bankruptcy Code. There's a definition in the plan of retiree benefits which is § 1.161. You can read it there, Your Honor. I'm not going to read verbatim, but you compare it with the definition of retiree benefits that's included in § 1114 of the Bankruptcy Code, and you'll see that the import of those two definitions are almost identical. There are some non-material changes.

They talked about the petition date, capital, initial caps on those words as opposed to the date that a petition is filed commencing a case, but otherwise, Your Honor, the definitions are the same. And that's what they were getting at in the plan, in 8.6 with regard to their right to do something with regard to retiree benefits plans. And that's what they said in their motion, Your Honor. In their motion that was filed on January 13, starting on page 13, paragraph (34) and continuing, they say, "Section 1114 of the Bankruptcy Code which deals with retiree benefits, which is basically the same definition of retiree benefits, is included in the plan and adopted in 8.6 of the plan." They say that 1114 does not apply to the SISP. In paragraph (37) they say, "The SISP plan provides supplemental pension payments during retirement which is not the form of payment included within the definition of, quote, 'retiree benefits', which is dealt with in 1114." That's what the debtor says, Your Honor, and that's one of the reasons why § 8.6 doesn't apply. Another reason is, 8.6 talks about, again, retiree benefits and a retiree benefit plan, and it talks about payments to retired employees of the debtor. Well, as a fundamental or practical matter, Mr Hylland is not a retired employee of the debtor. Your Honor, in the debtor's disclosure statement filed in connection with their second amended plan, they talked about, and this is set forth again in our objection, they talked

about the plans that they intended to terminate prior to the effective date of confirmation of the plan or the effective date of the plan, that is, and on page 58 of the disclosure statement, footnote 51, which is set forth on page 2 of Mr. Hylland's objection, it says, "The debtor intends to terminate and/or reject the non-qualified plans as discussed above and will be filing a motion seeking an order implementing the proposed termination and/or rejection. The debtor intends to reject the following non-qualified plans." And then they list three plans in the disclosure statement, none of which were the SISP plan and all of which were included in the debtor's first motion to terminate non-qualified plans, which is filed on August 31, which I think was item 4 on the docket for today which has been continued several times, but that motion filed August 31 does not involve the SISP plan. The SISP plan is not stated as being one of the plans the debtor intended to reject. The last sentence of that footnote 51 in the disclosure statement, Your Honor, says the debtor intends to assume the remaining non-qualified plans. So, we get to the effective date of the plan. There's been no motion to either assume or reject the SISP plan, and the plan of reorganization in § 8.1 provides -- well, I'll call it an assumption default if an executory contract has not been assumed -- or, I'm sorry, has not been rejected as of that time or it is not a motion pending for

the rejection of the contract then it's assumed. There was no such motion pending as of the effective date. None pending as of the substantial consummation of the plan. We thought, well, maybe it was assumed. They say in their objection, well, you're misreading the plan. We didn't assume and it's not an executory contract. We're just going by what the debtor said in their disclosure statement. They talked about rejecting these non-qualified plans, and then they also said, We intend to assume all the rest. All the rest would include the SISP.

THE COURT: Right.

MR. DEMMY: That's one point, Your Honor. The next point, Your Honor, is that we believe that rather than § 8.6 of the plan, this SISP plan and the debtor's right to take action with respect to it is, it rests in 8.5 of the plan which talks about the debtor retaining the right to terminate up to the effective date of the plan. So, Your Honor, we don't believe that 8.6 applies. We believe that this is either an 8.1 -- the debtor says that's not the case, but if it's not 8.1 it's 8.5 which specifically cuts off the debtor's right to do anything, terminate or take any action to modify the SISP plan after the effective date of the plan which occurred on November 1 of 2004. Even after that time, Your Honor, we had substantial consummation of the plan in late December, after which time the debtor cannot modify the

plan. We believe that what has happened here, Your Honor, with respect to the SISP plan is that once we got to the -- certainly once we got to the substantial consummation of the plan in late December that SISP plan -- and consistent with what the debtor said in their disclosure statement about assuming all other non-qualified plans, that that plan is now an obligation of the reorganized debtor, and it's the reorganized debtor's ability to terminate or not under non-bankruptcy law, which if they have that right, they have that right. We're not here contesting their right to terminate per se. What we're saying is that this debtor, as opposed to the reorganized debtor, cannot seek this Court's authority to terminate the plan and convert these claims into Class 9 claims under the Bankruptcy Code. That is simply not what they can do at this time. These are reorganized debtor obligations.

MS. DENNISTON: It's a compelling argument, Your Honor, but there's one fallacy. And the fallacy is simply this: The plan says what the plan says as to the definition of retiree benefits. The SISP is a retirement plan. At the confirmation hearing, the debtor made a record. I made it, advised the Court that those plans were still being analyzed and as soon as the debtor made a determination, including the SISP, then a motion would be filed. What Mr. Demmy is ignoring, Your Honor, is the fact that in the plan there's

also a provision that said that the debtor had to file all claim objections within 90 days of the effective date, and this motion was filed as a form of claim objection knowing that a number of people had filed SISP claims including Mr. Hylland. On February 1, in connection with those claims, the debtor filed the motion objecting to those claims moving to terminate both those plans as § 8.6 permits. One can't simply take the language from the Code, the language of the plan and say, The plan doesn't say what it says; it says something close to what it says in the Code. Unfortunately, this confirmed plan expressly provided the debtor to amend or terminate benefits on these non-qualified plans. The debtor's claim objection to the SISP claims was filed on or before February 1st in the motion, which seeks to terminate those plans. All of the claimants were addressed, their claims were addressed. That was timely under the confirmed plan, consistent with the confirmation order, and as such, the debtor is merely enforcing the rights that it reserved both in the confirmation hearing pursuant to the confirmation order and in connection with the its claim objection. It was timely. The debtor believes these are obligations of the debtor not the reorganized debtor, and that this Court must look to the confirmation order and the plan reading in terms of the claim objections and the expressly reserved rights in determining this motion. We submit that Mr. Hylland is

misreading the plan. The debtor has performed consistently with the provisions of the plan. Its claim objections were timely filed prior to the cutoff established in the plan, and through those claim objections, the debtor sought to terminate the plan. And with that, we'd ask the Court for a ruling denying the motion.

MR. DEMMY: Your Honor, just one sentence in response. I would suggest that a debtor has no ability to object to a claim against a reorganized debtor, and the cutoff date here was the effective date or substantial consummation not February 1.

THE COURT: Well, I don't think there's any question that there's a jurisdictional issue, and whether or not I have jurisdiction under any of these objections relative to a non-qualified plan. The issue comes up this way that there was substantial consummation of the plan, and that was filed on December the 29th, 2004, when the order of confirmation was issued all of the property vested in the debtor. The debtor's relieved of any further obligation and the Court's relieved of obligations unless they're specifically mentioned in the plan, and there's a different test as to the jurisdiction relative to what happens post-confirmation or what happens during the administration of this plan. The Third Circuit has led the way on it with the Resort International case, and it specifically pointed out,

and this case was just followed by the Ninth Circuit in the Pegasus case vs. the State of Montana that Packard (phonetical) doesn't apply. The related to jurisdiction is restricted only if there is a close nexus to the instrumentation of a consummation of the plan. Now, it can't be consummated again. It only can be consummated once. And what I'm basically saying is I believe that these matters have to be resolved under applicable law in another jurisdiction. I'll take the matter under advisement.

MS. DENNISTON: Thank you, Your Honor. Matter number 17 is the debtor's motion for order compelling the Depository Trust Company to distribute shares to holders of allowed claims in Class 7 pursuant to the second amended and restated plan of reorganization. This matter is going forward but I would note for the record that DTC has advised the debtor that it made the distributions on April 14th and April 27th, and that the motion is now moot.

THE COURT: Did Magten agree with that? And how about Law Debenture? Did they agree that the motion is moot?

MR. SNELLINGS: Your Honor, John Snellings for Law Debenture. This is the first that we've heard that DTC has made that distribution. We had filed a response to this motion suggesting that due to the fact that there was an appeal of the settlement agreement, that in context with that settlement agreement, we had an interest in that particular

shares and warrants. We are concerned about that. The appeal's going forward but if --

THE COURT: What relief am I going to be able to give?

MR. SNELLINGS: I'm sorry?

THE COURT: What relief is the Court going to be able to give if the distribution's been made of the warrants and the stock?

MR. SNELLINGS: Right. That was going to be my conclusion. It sounds like the tree has been cut down, and we'll just have to take that up with DTC.

THE COURT: Already been hauled away to the logging company.

MS. DENNISTON: Your Honor, just for the record, we did put the status of this motion on the agenda which was timely filed with the Court on the 22nd. Matter number 18 is the in re adversary proceeding. This is the motion of Magten and Talton Embry pursuant to Rule 7041 of the Federal Rules for payment of fees and expenses, and that matter is going forward. Matter number 19, Your Honor, is the Northwestern vs. Ominson (phonetical). This is the order to show cause why defendant should not be enjoined from continued prosecution of the state court action.

THE COURT: All right. Let's go with the Magten request for fees.

MS. STEINGART: Good morning, Your Honor. Bonnie Steingart from Fried, Frank on behalf of Magten.

THE COURT: I read all of the documentation and all of the words and all of the allegations and all of the charges back and forth, and if you've got anything more that you want to add relative to this request go right ahead, but let's not have a repetition of which you've already stated in your motion relative to this fee award.

MS. STEINGART: Right.

THE COURT: And I think it comes down to whether or not that the commencement of this action was filed on that page or whether it was vexatious and whether or not Magten and the dismissal, subsequent dismissal, warrants the award of the nine hundred and some thousand dollars in fees.

MS. STEINGART: I'm sorry, Your Honor, I thought that the question on the floor was DTC. I just need to get my notes to respond to your question about the motion that we have on. May I just get my notes?

THE COURT: Oh, you're back to the one with --

MS. STEINGART: Yes, right, and that's done. Because it is moot at this point though, you know, one would think that once the objections were filed that DTC would have refrained from making that distribution until the Court heard it, but what's done is done, and we think that the debtor is solvent enough to be responsible for that distribution if it

was wrongful. So, from DTC's perspective, I agree that it's moot. From the debtor's perspective, if we think that, you know, the debtor's urging DTC to distribute those shares when there was still some dispute about the allocations in that class, we'll seek the remedy against the debtor, but with respect to DTC's motion, I agree, Your Honor, that that's moot.

THE COURT: All right.

MS. STEINGART: If I could just get my notes.

THE COURT: Now, who's going to handle the Magten motion for fees?

MS. STEINGART: Thank you, Your Honor. With respect to the fees, I certainly will not repeat what we have in the motion. I understand the Court has read it. I would like to review though what there is no dispute about, Your Honor. There's no dispute here that under 7041 when a case is dismissed, it's dismissed on such terms and conditions as the Court deems just and proper. There is no dispute that the voluntary dismissal with prejudice by the debtor here of all claims against Magten and Embry amount to a judgment on the merits in favor of both Magten and Embry. There's also no dispute that this Court, as all other federal courts, has discretion to award attorneys fees where litigation is commenced in a manner that is false, unjust, vexatious, unnecessary, and groundless, and I think that the evidence is

substantial that this was.

THE COURT: What is the evidence that this litigation was in bad faith and vexatious?

MS. STEINGART: Well, Your Honor, if we start with the complaint in this action, okay, which is Exhibit B to Mr. --

THE COURT: Well, the background of the case, as I read it and as I understand it is that when Magten and Embry were on the Unsecured Creditors Committee they came into some confidential information relative to non-public disclosure matters, and notwithstanding that, that during this period of time and shortly thereafter when Magten and Embry were thrown off the Committee by the U.S. Trustee's Office, this company went ahead and purchased a lot of these Quips bonds.

MS. STEINGART: That's correct, Your Honor.

THE COURT: And the question then arose as to, well where did he get the information? What was he relying on? Now, as I understand it, he was not an owner of any of these Quip bonds pre-petition.

MS. STEINGART: No, Your Honor, that is precisely not the fact.

THE COURT: What is the fact?

MS. STEINGART: The fact is -- and the debtor knew this as we start with paragraph (1) in the complaint where the allegation is that Mr. Embry somehow acquired 40 percent

of the Quips while he was in possession of material non-public information. Incorrect. In the letter that Mr. Embry wrote to the Trustee prior to being appointed to the Committee in which the debtor was copied, Mr. Embry indicated that he owned in excess of 35 percent of the Quips and on that basis thought it appropriate to appoint him in addition to Law Debenture to the Committee. So, if we look at paragraph (1) of the complaint, in paragraph (1) of the complaint, the allegation is patently false and the debtor had documents in its files that it was patently false. Indeed, when I questioned Mr. Hanson about this allegation in his deposition, Mr. Hanson was the 30(b)(6) witness designated by Northwest to answer about the allegations Northwest made in the complaint. I said, Mr. Hanson, did you see the letter that the Trustee provided to -- you know, that we wrote to the Trustee that was copied to your counsel? Did you think about it when you made this allegation in the complaint? His lawyers would not let him answer. As we pointed out in our motion, Your Honor, when I asked Mr. Hanson, Well, what investigation did you do? Who did you ask about what information was conveyed? He asked no one one question about any allegations in the complaint. And that portion of his deposition is Exhibit A to Mr. Kaplan's affidavit. Let's look on in the complaint, Your Honor, because --

THE COURT: I thought you just read the complaint because I thought that the whole situation was that once the Court signed the ethical law order and prohibited any of these members of the Committee from using any of this non-public information for their own benefit --

MS. STEINGART: Right.

THE COURT: -- that Embry then got on the Committee, he knew about the confidentiality agreement, and it was after it was relieved that he purchased additional Quips.

MS. STEINGART: Right, but, Your Honor, that's not in fact what happened, and the debtor knew that because of the discovery it had pre-complaint. What happened is, Mr. Embry purchased securities during the period of time after -- at the end of November, Mr. Embry or actually Magten was appointed to the Committee and on December 17th, attended the first Committee meeting. Prior to that time, no confidential information about the debtor was provided to Mr. Embry. What Mr. Embry did receive was a copy of the by-laws and some other technical information concerning the Committee. Indeed, the testimony showed that on December 17th the first Committee meeting attended by the debtor in conjunction with Committee members, the debtor was concerned because the debtor was going to be giving confidential information that had prior to that point not been shared with the Committee.

And, at that time, the debtor said, We can't give anything written to the Committee because we need the Committee to sign confidentiality agreements. So, indeed, thereafter confidentiality agreements were signed. It's not our position that at that meeting Mr. Embry could receive confidential information and trade. What the debtors knew because of the trading records they had before they filed the complaint was that Mr. Embry did not purchase any securities after that first meeting, and that in the period of time that from when he was appointed until the first meeting there was no confidential information that he received. We told them that before they filed a complaint. They had an affidavit. They had his trading records, and yet they filed the complaint. All right, so, they knew, they knew that there was no confidential information in his possession at that time. Let's talk about the untrue statement, Your Honor, in the complaint about the trading order, okay, and let's look at the trading order, if you would like. They say in paragraph (12) of the complaint that the trading order prohibits members of the Committee from trading in securities. Not true. Patently untrue. Knowingly untrue, Your Honor. What the trading order did was to establish a safe harbor so that members of the Committee who had a large enough organization to do so, could create what we have called an ethical wall, and if we look at the trading order,

Your Honor, and I will hand one up if you would like, on page 2 it makes clear that a Committee member can elect to be subject to the order and once it elects to be subject to the order, then it is bound by its provisions. And that is made even more clear, Your Honor, in the confidentiality agreement which post dates the trading order. But the confidentiality agreement, and I'll hand that up to the Court as well, Your Honor, says on page 2, okay, now the confidentiality agreement that was drafted by Northwest was drafted more than a month after the trading order was entered. And it says -- I'm sorry, Your Honor, on page 3, and I'm quoting, "It is understood that nothing herein shall prevent receiving parties who have established an ethical wall pursuant to the trading order entered on November 6 from trading in Northwest securities in accordance with the provisions set forth in such order or from otherwise trading such securities in accordance with applicable law." So when Northwest put together and drafted the confidentiality agreement, they recognized that the trading order provided a safe harbor and nothing more. It was not a prohibition by its terms and certainly not a prohibition in practice. Now, the fact that the trading order was not a prohibition is made even more clear, Your Honor, by the Committee's by-laws, and the Committee's by-laws are in the exhibits provided, Your Honor, attached to the correspondence in Exhibit S behind Mr.

Kaplan's affidavit. And what the by-laws say, if I can read from them, Your Honor, paragraph (1.7): "Each member shall have the ability to trade, purchase, sell, or otherwise dispose of its claims or interest in the debtors in accordance with applicable law including any orders entered or to be entered by the Bankruptcy Court." So, these are things that the debtor knew and is charged with knowing at the time they filed this complaint. The allegations in the complaint are patently false, and they were knowingly false at the time they were made. Later in the complaint, Your Honor, in paragraph (21) the debtor talks about how the defendants admitted their understanding that they were prohibited from trading when we sought to have an amendment to the trading order and didn't get it. Untrue. What we understood at that time was that as long as we were in possession of confidential information we should not trade and certainly they did not prove that we did trade. Let's go onto the allegations beginning at 25 and thereafter. Thereafter it's shown that the trading occurred either before the information was gotten or after Mr. Embry was on the Committee. And let's talk about the events after Mr. Embry was on the Committee since now we talk about how he had none before the first meeting, had no confidential information and they knew he had no confidential information or could easily ascertain that. Let's talk about the events after he was

removed from the Committee which is May 14th onward. What happened by that time, Your Honor? What happened by that time is that the debtor filed a plan, the debtor filed a plan amendment. In the first week of May, the debtor filed a 10(k), the debtor filed a 10(q), and I think that we can charge the debtor with knowledge of its own filings when it makes allegations that after May we still had some confidential information that was material to the value of these Quips. Given all those disclosures and all the duties that the debtors had in each of those documents to disclose all material non-public information, how could the debtors possibly have a good faith belief that we had material information to the value of the Quips after May 14th? They knew what they disclosed. They knew what the state of play was. They knew we were off the Committee, and they knew that for a long period of time before we were off the Committee. We were certainly isolated from things that were going on, on the Committee. They never even asked the Committee what they gave us. So, Your Honor, I think it is fairly clear from the allegations in this complaint that are on their face false, that this litigation was commenced in bad faith. And then if we look at the conduct of the debtor after this litigation was commenced, in all the other pleadings filed with this Court in which they made disparaging remarks about both Magten and Embry on the basis of this false filing, we can

see the intention of the debtors when they filed this complaint. The intention of this debtor to try to undercut the fraudulent conveyance motion, to try to harass and oppress Mr. Embry in pursuing that along with Law Debenture. Then let's look at their activities as Your Honor is well aware from the papers we filed during discovery. The only discovery that Northwest sought was discovery it had trading records. And indeed, as Your Honor knows from the numerous phone calls that we were forced to make to chambers prior to the trial in this action and during discovery, Northwest often joined the Committee in trying to quash the subpoenas we had to sort of say, Hey, what's the information? They tried to quash the subpoena on Paul Hastings. They tried to quash the subpoenas on Northwest. They joined the company in trying to quash -- I'm sorry, Northwest joined the Committee in trying to quash the subpoenas we had on Committee members just so that we could establish a record that there was nothing that the Committee gave us that was material, non-public. So even though Northwest said we need discovery because we don't know what the Committee gave them, when we tried to do discovery, they joined the Committee in trying to shut that discovery down. Your Honor, in doing so, they created expense, embarrassment, delay. They abused not only Mr. Embry and Magten but also the Court and the Code and the powers that the debtor has in settings such as these. I

think that we have more than sufficient evidence, Your Honor, so that Northwest should have to pay not only the expenses but also the fees of Magten in this enterprise. And to the extent that this Court has any doubt that this is the case, I think that we should return here, have Mr. Hanson take the stand, and Mr. Hanson can tell you just how little investigation he did. He can confirm that he just brought the complaint because he thought this was a good way of shutting Magten down, and once he shut Magten down, then taking whatever steps as you will see when Law Debenture speaks were available to them to shut Law Debenture down from protecting the Quips. Thank you, Your Honor.

THE COURT: Thank you.

MS. DENNISTON: Obviously, Your Honor, there's another side to this equation. I think that it's important to take a look at the complaint in the context of the factual record that was before Northwestern at the time the complaint was filed, and I want to go back to the period where the issue arose for the first time, and that was in connection with the discovery on confirmation, and I believe at that point we did receive certain trading records from Magten. Prior to that, in terms of actually knowing what specific amounts that Magten held when it purchased and how much it purchased and on what information it purchased, the debtor didn't have those records, and the complaint doesn't say that

the debtor did. I want to look at the fact that at no time did the debtor ever obtain a complete set of trading records that weren't otherwise redacted that show who bought what and when. In fact it later became known that the trading records that had been submitted had been redacted to hide the holder. That they were in fact held by Mr. Talley. There are any number of disputes that we could go through in chapter and verse about the set of the trading records, but even more importantly, Your Honor, this was a litigant that had been an active litigator throughout this case objecting to any number of material motions, and yet was sitting on the Committee until the May 14 date with full access to the information that Northwestern was providing to the Committee or to the Committee's advisors. Let's look at a couple of key points. First of all, with regard to the trading order, there is an expectation that if a member of the Committee was not going to be bound by that trading order that it would have filed and given notice. That it did not have, had not established an ethical wall. When the debtor learned in fact that there wasn't an applicable wall, then the debtor became concerned. The debtor's expectation throughout this that there was no trading because there was no ethical wall, there was a minor trade in December which was explained away during discovery, but there were a number of trades after Magten came off the Committee, and I think the second thing that we need to focus

on is that from the period of January to May, while the Magten still sat on the Committee, the Committee's advisors were receiving any number of confidential information that was not disclosed in the (k), the (q), the plan and the disclosure statement. All of those things involved the drafts of pleadings with regard to certain projections and the debtor's preparation for confirmation, and any number of 9019 motions that are still pending. So when Magten left the Committee, Your Honor, it had in its possession or at least had had access to a significant amount of material non-public information. A lot of that information is still not publicly available because those motions are still pending. But that being said, when the debtor filed the complaint, the purpose of the complaint was to, (1) get to the bottom of what was purchased and when, and what Magten relied upon. The complaint is accurate in the sense that it was the debtor's belief that if the member of the Committee did have an ethical wall it would not be trading, and that the member of the Committee when it exited the Committee would continue to be bound by the confidentiality agreement. There's no evidence that that in fact -- the confidentiality agreement was supported once Magten left the Committee. But even worse than that is that we ended up with a situation where the state of the record today, the bottom line is that why didn't this action continue is simply this, Your Honor. When we

looked to the Plan Committee -- or excuse me, looked to the Committee and looked to the information that the debtor could document, the confidential material, non-public information that was provided to the Committee's professional advisors, it was significant. It was detailed, and it was ongoing from the period of -- throughout the Committee's existence but certainly from the period of January through May while the debtor was preparing for confirmation. What we couldn't find, Your Honor, and there were problems with discovery, we could not find any evidence or sufficient evidence to proceed on the face of the complaint that showed where the professional advisors or the Committee communicated the material non-public information that the debtor had consistently provided to them. In other words, to put this in context for the Court, I handled the discovery and the response to the subpoena served by Magten on behalf of Northwestern, and there were over thirty boxes of material non-public information which included projections, confirmation scenarios, analysis evaluation for the plan that were provided to the advisors for the Plan Committee, but yet, when we got to discovery we couldn't get that very critical link to show that in fact that that information had been given to Talley Embry. Did he have access to it? We believe he did. Would it have been imputed to him? We believe it might have, but by the time we got through the

discovery and began to prepare for trial it was clear to the debtor that the better course was to dismiss with prejudice because we couldn't link up the very pieces we needed to establish that as to those trades that he made after he left the Committee were made on the basis of material non-public information that he was provided while sitting as a member of the Committee. We don't believe that there's any evidence of bad faith or harassment here. These are two grown-up litigants slugging at each other. They've been slugging at each other throughout this case, Your Honor. If you look at the number of substantive motions that Magten has filed, the very fact that we have seventeen pieces of active litigation, I believe, I may be off one or two, between Northwestern and Magten or the officers, so on and so forth, these are grown-up litigants. There's no bad faith. There's no harassment. This was not vexatious, wanton, or oppressive conduct as the statute required. In fact, three of the five cases that Magten relies on even when you have the situation that we have here with a clear admission that they are the prevailing party, the Court refused to award fees. We filed in good faith based on the information that we as the debtor knew had been given to the Committee's professional advisors. When we learned through discovery that we didn't have a clear evidentiary trail of that information being delivered to Magten and that we would be forced to argue imputation, we

decided the better course was to dismiss with prejudice. The courts have held that there is no showing here, and in light of this Court's denial of the motion to dismiss, in light of the factual record that there were trades after they left the Committee, while they still had or had had access to confidential information, there's nothing to conclude that this suit was unnecessary or groundless. And with that, we believe that Magten's request for attorneys fees and costs should be denied. We also note for the Court that Magten has not complied with the statute in terms of the bill of costs. That no bill of costs has been provided, that they have not complied with 28 U.S.C. 1920, that a number of the costs that they're seeking are not included in 28 U.S.C. 1920. And as for the attorneys fees, Your Honor, that's part and parcel of being in a bankruptcy case where the litigants have a major dispute, and I don't think that there's any denial that both sides here have incurred large amounts of attorneys' fees to try to deal with Mr. Embry's claims and Magten's claims. We believe that it would be totally ignoring existing precedent to award Magten fees in this case given that there's three facts that we think show the debtor's good faith. Fact number one is that they didn't put anybody on notice that they had no intention of signing up to and participating in the order, the trading order; that we did establish that there was a trade in December and that they explained that

away in discovery; that they signed a confidentiality agreement which had provisions that should have continued to remain in place after they left the Committee; they were bounced off the Committee at a time that the debtor was getting ready for confirmation, and during that period, the critical time period between January and May, the debtor produced extensive amounts of material, non-public information, to the Committee's advisors. So, the debtor brought the complaint in good faith understanding what had been communicated to the advisors. When it was unable to make the link that that information was transmitted to Mr. Embry or Magten, it chose to do what it should do which was to dismiss with prejudice. We believe our conduct has been appropriate. We believe we were looking out for the best interest of the estate, and we believe that it's horrendous precedent that a committee member that's bounced off a committee should be permitted to continue to trade on material non-public information without any kind of supervision or at least the debtor being able to address it, and we would ask the Court deny the motion.

THE COURT: All right. There's a brief response then from Magten's counsel.

MS. STEINGART: Thank you, Your Honor. Your Honor, I am appalled. I am appalled that Ms. Denniston should stand up here and imply that there was material non-public

information still out there, still available to Mr. Embry after he was removed from the Committee when the debtor had filed the plan amendment, the 10(q), the 10(k). Is that an admission that those documents are --

THE COURT: Well, it might have been different information. Some of the non-public disclosure information does not go into a disclosure statement.

MS. STEINGART: Your Honor --

THE COURT: We don't know what that is.

MS. STEINGART: I have no argument that there may be information that's confidential during every trading period. I mean, certainly, there are directors and officers of companies that trade during windows that are given to them to trade, and, of course, companies always have confidential information, but they have confidential information, Your Honor, that's not material. Ms. Denniston cannot with a straight face stand up here and tell this Court that after May 14th there was a scintilla of material non-public information, and the fact that she would suggest that Mr. Embry engaged in wrongful conduct to this day when they have withdrawn their complaint with prejudice is shameful. And I am furious about it, and so should the Court be. This is my client who's being accused of dishonesty and being accused of wrongful conduct as both in his corporate form and individually, and I think that is horrendous. They never

said before they stood up today that they didn't have the trading records they show when they trade before they filed the complaint and indeed, Your Honor, they had them. And we should put somebody on the stand, Mr. Austin or Ms. Denniston, because they had all of them in connection with the confirmation hearing and the deposition which was in July. By the beginning of August they had all those records. They didn't file this complaint until August 20th. So she's wrong. She had it. She knew when the trades occurred, and she knew that the trades occurred a substantial amount of time after everything should have been public. The issue about the trading order, they knew that Magten wasn't going to comply with the trading order because Magten asked for an exemption. The issue about the trading order is that in the complaint, they were -- they made a false statement about it, and they made misleading statements about it. They knew that the trading order was not a prohibition. They knew it was a safe harbor and they represented it otherwise to this Court. They knew before the complaint was filed and everyone on the Committee, he had 35 percent of stock, and they misrepresented that in the complaint. From January and May there was confidential information, and they can't prove what went to Mr. Embry. Well, they never tried. And the Committee made it clear that the amount of information that went to professionals and that was shared with members of the

Committee was extremely limited. For them to just say they can't now get him because they can't prove it is the worst kind of tactic and the worst kind of cynical conduct I can imagine. They gave us tons of information. Thirty boxes, Your Honor. Two litigants slugging it out. So they can do anything? They're allowed to make false allegations in a complaint? They're allowed to have a client not review a complaint because we're slugging it out? I don't think that's the way this Court conducts itself. I don't think that anyone, any litigant, no matter how hard they're fighting, no matter how concerned they are gets to file false documents with this Court and that is precisely what they have done, and they have gained the system. They gained the system in filing the complaint, in doing the discovery, in every action they've taken in connection with Mr. Embry and the complaint and continue to do so now in the statements made to this Court, and I would demand that those accusations to the extent they were made again be withdrawn. Thank you, Your Honor.

THE COURT: Wait a minute, I've got a couple of questions about your fees and costs. Your firm is asking for an award of $698,602 for five months' work?

MS. STEINGART: It was in the period from August --

THE COURT: That's pretty high fees for even for New York lawyers; isn't it?

MS. STEINGART: I --

THE COURT: Even if I go through here, look, the first day, August the 20th, you've got one, two, three lawyers who all reviewed the complaint, and they're charging almost $4,000. Is that complaint that tough?

MS. STEINGART: Well, we had to review the complaint and decide what we're going to do about it, Your Honor.

THE COURT: That's not what it says here. It says review Northwestern complaint. Review complaint regarding Talley. Review NOR complaint. Let's get on with something else. On this cost bill you've got here.

MS. STEINGART: Yes, Your Honor.

THE COURT: You haven't filed it in accordance with 1920, but do you know of any under 1920 where you're getting -- can get duplicating costs of $43,124 or transportation for late night and other fees of 4,154 or working meals for $2,649 or a secretary and paralegal overtime for $1,546, or temporary paralegals for $258 or computerized research for $10,776? Do any of those come within 1920?

MS. STEINGART: Well, I think certainly that the duplicating costs do, Your Honor, and Ms. Denniston did refer to thirty boxes, and we had productions from the Committee. We had productions from the company. We had productions from the investment bankers. We had productions from the -- I'm

sorry, the broker dealers. We had productions from committee members. We had lots and lots and lots of documents that needed to be looked at, that needed to be assessed, and that we needed to track down. So, Your Honor, and given the time frame where we were working on this, there was, you know, certainly many motions made and during the time, from the time that we were ordered to trial to trial there were numerous depositions. Four of us were working almost round the clock on this. So, I think that these fees and expenses, and we certainly can deal with items to the extent that Court believes that they may be inappropriate, we can explain them, and the Court can --

THE COURT: Just as a matter of curiosity --

MS. STEINGART: Uh-huh.

THE COURT: One looks as these fees as Magten paid them.

MS. STEINGART: Well, Magten generally pays the fees as we bill them, Your Honor.

THE COURT: I didn't ask that question. I said how much has he paid?

MS. STEINGART: I believe that Magten, though I have not looked at what's outstanding, but we do have a fiscal year end that's in February, and that Magten had paid almost a hundred percent of the fees that we had billed until that time.

THE COURT: Thank you, that's all.

MS. STEINGART: Thank you, Your Honor.

THE COURT: I'll take this matter under advisement. We'll go now to verified complaint for declaratory relief, conjunctive relief under 105 by Northwestern against Ammondson, et al, and motion for preliminary injunction is the purpose of this hearing.

MS. DENNISTON: Yes, Your Honor, this is in connection with the motion that Northwestern filed on January 31st seeking to terminate certain agreements. On March 31st, the defendant filed an objection and a counterclaim. The objection included the debtor's purported counterclaims which the debtor believes are identical to those set forth in a state law complaint that the defendants have also filed. The causes of action include breach of contract, breach of covenant of good faith and fair dealing, abuse of process, and then in the state court litigation it included a malicious prosecution cause of action. The debtor filed a request for an order to show cause because the debtor's believe that the state court action, if allowed to proceed, would be in violation of the plan and the confirmation order, that Northwestern would suffer irreparable harm because it would be subject to dual proceedings in both this Court and in Montana state court over the same contracts, and that the State board action should be stayed to allow the debtor to

proceed with its motion to terminate. Now, I will admit and be candid with the Court, this is a motion that was filed on the 31st in connection with the last day for the debtor to object to certain claims. This was filed in an omnibus motion to terminate. It's the debtor's belief that particularly in light of the notice of that motion and the defendant's response under Langencamp (phonetical) and Gardner, the cases that the debtor cited, that this Court has jurisdiction over this matter and should retain it. We have been advised and have reviewed this morning the pleadings that were filed by the defendants. The defendants raise an issue that they did not receive notice and, therefore, cannot be bound by the confirmation order. I just want to note for the Court that if the debtors believe that, that is a red herring argument because this matter arises in connection with claim objections and the motion to terminate to eliminate these, that the service of that motion was proper on the defendants, that they did timely file an objection and counterclaim with the Court, and that in order to avoid duplicative litigation, the debtor believes that under Langencamp that the debtors have accepted jurisdiction of the Bankruptcy Court and that this Court is where that matter should be received -- should be continued. We have asked that the Court stay the Montana litigation pending the resolution of the debtor's motion.

MR. SULLIVAN: Good morning, Your Honor. Bill Sullivan from Buchanan Ingersoll on behalf of Lester Ammondson and a group of retirees. Your Honor, I'd like to introduce to the Court Mr. Cliff Edwards from Montana. We filed a motion for admission pro hac vice last week. Mr. Edwards is here to respond to the allegations and request for an injunction, and I ask that he be permitted pro hac vice. I checked the docket. I did not see an order.

THE COURT: I signed the order for Mr. Edwards and Mr. Doak Sunday morning and faxed them out that day.

MR. SULLIVAN: Okay. Your Honor --

THE COURT: But it probably hasn't hit the docket yet is all.

MR. SULLIVAN: Okay. Thank you, Your Honor. We also filed a pleading yesterday which was consistent with the schedule that the debtors had requested.

THE COURT: I have that.

MR. SULLIVAN: Okay. Your Honor, with that I'll introduce Mr. --

THE COURT: All right.

MR. SULLIVAN: -- Edwards.

MR. EDWARDS: Good morning, Your Honor.

THE COURT: Good morning.

MR. EDWARDS: Your Honor, first of all, this Court has no jurisdiction over this matter that Northwestern has

brought, and before I begin, may I say for the record, my name is Clifford Edwards, Billings, Montana. With me, co-counsel from my firm Creo Kulver (phonetical) also have John Doak who is co-counsel with us, and I would like to introduce three members of these retirees that have come to Delaware with me: George Thornton (phonetical). We have Gary Meldal (phonetical) and Sheward Christianson (phonetical), and in the back of the room, as any good law student would find the back, is my intern, my son, John. He's learning quickly to go right to the back of the classroom. The fundamentals of this case, Your Honor, are this -- and in the application for all of this emergency and extraordinary relief, Northwestern attached through their Atlanta counsel Exhibit B, a letter of March 31, 2005 that I sent to W. Wayne Harper of Northwestern Energy in Beaut, Montana. Said hello to Mr. Harper this morning. He's here in the courtroom as well. The critical sentence which Northwestern didn't highlight in any of their prayers for emergency relief and prayers for attorney fees and prayers for sanctions and prayers for cost was this: I won't serve the complaint -- and I'm referring to the one in Beaut State District Court until we know what the Bankruptcy Court until we know what the Bankruptcy Court does. Consistent throughout our complaint, that they also attached in that exhibit, is our allegation that the Bankruptcy Court has no jurisdiction. We said that in our responsorial

pleadings here to the very last minute filing literally January 31, 2005 of Northwestern that claims to bring these retirees in. We have consistently claimed there is no jurisdiction for the very simple matter that these gentlemen whose benefits were slashed, unilaterally, without notice and without any ability, any notice to participate in these bankruptcy proceedings here in the State of Delaware. Now, it is undisputed Northwestern cannot show you any notice at all to these retirees that they unilaterally slashed, but it is worse, and may I show the Court a filing from May of 2004? There are two critical filings I wish to bring to the Court's attention that absolutely show not only was there no notice, but that these gentlemen were once named, once referred to and then struck from the disclosure statement. I'm referring first of all to a filing in May of 2004, the docket number begins 993177.48, and with permission of the Court, I would like to present a summary of that to the Court.

THE COURT: That would be fine.

MR. EDWARDS: Significantly, Your Honor, we notice that when the debtor begins to talk about the non-qualified compensation and benefit plans they're going to reject, in the May 1, we have the top-hat contracts which are an aggregation of individual agreements with the Montana Power Company entered into with various executives which grant the executive retirement benefits in amounts specified in the

contract and certain individual contracts the debtor entered into with five former employees to provide each with additional retirement benefits of various forms and amounts, and the family protector plan described in greater detail below. As of the filing of the petition, the debtor had accrued and had unpaid liabilities. Now, I want to contrast that with the next summary.

THE COURT: I'm going to mark this as Exhibit 1 so we can keep it identified on the record. Is there any objection to the Court taking judicial notice of this exhibit?

MS. DENNISTON: Thank you, Your Honor, that's fine.

THE COURT: All right, then it will be admitted.

MR. EDWARDS: Your Honor, then I would mark this next summary, which is an August 18th, 2004 filing here in Wilmington, Delaware under Docket No. 1053554.9, and may we refer to that as Exhibit 2, and I would move its admission as well and would like permission to bring that forward to the Court as well.

THE COURT: Very well. That exhibit will be admitted.

MR. EDWARDS: Significantly, Your Honor, in August of 2004, that very language that I just read, these top-hat contracts that would include these retirees to include the three gentlemen in the courtroom here in Delaware, that was

stricken. That was crossed out. The very contracts that they sought within minutes of the last minute, January 31st of this year, were stricken in August. Further, we have no jurisdiction of this Court on the very base of their own plan of reorganization which was granted November 1 of 2004. We noted on page 7 of that plan, which was approved by this Court, and that is Docket No. 1060234.9, they indicate that a bar date was January 15th, 2004, almost a year before they attempted to bring in this Court to slash these retirees, and it also says that they had filed proofs that -- all creditors had filed proofs of claim for each claim they assert against the debtor by the bar date. Our people never had any chance because they were never notified of any kind. If they were ever to have gleaned from back here in Delaware that they were even mentioned in May of 2004, they would have seen in August that their reference to them and their top-hat contracts were struck by Northwestern. Also on page 9 of their base order of reorganization of November 1, 2004, Docket No. 1060234.9, it says, Notice, and it says, Compliance with disclosure statement approval order, and it recites that, In accordance with the disclosure statement approval order the Bankruptcy Code and the Bankruptcy Rules as described in the affidavit of service sworn by Chris Shepper (phonetical) on June 14th, 2004, the debtor has timely (a) mailed, sub-(1) notice of the date, time, and

place of the confirmation hearing; (2) notice of the deadline and proceedings for filing objections to confirmation of the plan. And then it goes on to talk about setting out ballots and all of that. The long story short, Your Honor, these individuals that I represent had absolutely no notice even though that is also on page 97 of the reorganization plan where the Court has adopted Northwestern's representation that all notices were properly sent. There is no jurisdiction in this Court whatsoever because these gentlemen were denied any opportunity, because they got no notice, to participate in this exercise here in Delaware. They were denied all of their due process rights to object, and they are absolutely, that is Northwestern, absolutely banned from going forward in this fashion to try to deprive these gentlemen of their pensions. Because of that, not only does this Court have no jurisdiction to act further on these emergency hearings when the totality of the circumstances are looked at, when we told them we would not serve the complaint in state court until this Court has ruled and yet my co-counsel, Mr. Sullivan, as I yield to him in a moment, he had discussions with the Northwestern lawyers about this very date and these very matters. What I believe ought to be done without dispatch and would ask the Court to rule immediately that because of these circumstances, because of these documents no jurisdiction in this Court whatsoever, not only

to dismiss these emergency proceedings and not only to reject their request for sanctions and attorney fees and costs but to sui sponte have this Court impose a sanction against Northwest and allow us our costs, our attorney fees, as well as an additional finding of sanctions for what I think is an abuse of process in this Court. We had acted in all good faith trying to deal with these matters for these retirees only to have received these pleadings and then investigate and find under these circumstances that not only were these people once mentioned only by reference to their contracts but they were crossed out in an amended filing on August of 2004. We ask the Court to grant our relief immediately and with that I would yield back to co-counsel Bill Sullivan to speak of these other matters, Your Honor.

THE COURT: Thank you.

MR. EDWARDS: Thank you.

MR. SULLIVAN: Your Honor, Bill Sullivan on behalf of Lester Ammondson. The only thing I have to add is reference to discussions I had with respect to scheduling a hearing on the motion to terminate. As Your Honor has heard, our response to the motion to terminate indicated first and foremost that we objected to the jurisdiction of this Court because of the way that the plan had been handled and that our clients had been omitted from the plan process. With respect to that motion, after the state court action was

initiated and held in abeyance, I contacted counsel to say when can we schedule the motion to terminate for a hearing so that we can get this matter reviewed by Your Honor in a fashion to determine whether in fact you had jurisdiction or not. I was advised simply that this May 3rd hearing was going to be for non-contested matters, but that perhaps we could seek another hearing from your court. I even suggested that we be available in Montana, given Mr. Edwards' residence is there and the fact that all our clients are there. So, given that contact we were certainly taken aback when we got a pleading that indicated that there should be an emergency hearing requiring us to appear here on May 3rd. We certainly would have preferred to have your Court review this voluntarily and would have been glad to accommodate the Court either on May 3rd or at any other time, but there was certainly no requirement whatsoever that an injunction hearing be initiated.

MS. DENNISTON: Your Honor, if I --

THE COURT: Counsel for Northwest.

MS. DENNISTON: -- can respond on behalf of Northwestern. First and foremost the counsel here today that have been involved in these pleadings were unaware of this conversation. Had they called Mr. Knapp, me, Mr. Harper, or Ms. Chavant Nungoon (phonetical) who worked on these papers, we certainly wouldn't have proceeded, but obviously there's

been a horrible miss-communication because we were unaware of that request. Secondly though, returning to the substance of the matter before the Court, is there jurisdiction or isn't there, and what does it mean in terms of the notice? First and foremost, consistent with the evidence before the Court and Exhibit 1 and Exhibit 2, the debtor has been of two minds as to what should or shouldn't happen with these so-called Montana top-hat agreements. It's the debtor's position now that it was in the debtor's economic interest to terminate those contracts as evidenced by the motion filed in January, and that is the same analysis that I briefed the Court on earlier that the debtor reserved those rights, the debtor does not believe these are executory contracts because no services are being provided, and that the debtor seeks to terminate them as the debtor pursuant to the plan provisions that we've already briefed the Court on. As to the notice and whether or not these retirees have been impacted by the way notice was given, after the debtor made the decision consistent with the debtor's plan which permitted it to terminate those plans on a post-effective date basis or as the debtor believed and as the debtor drafted the plan and it was approved by the Court, the debtor filed that motion in January. It filed it on the timing as described to the Court earlier so that it would be filed as if there were claims pending for each of those individuals and the debtor was

objecting to those claims, and what the debtor --

THE COURT: I'm a little bit confused, counsel. What claims were pending that were filed by anyone of the retirees that you name in this complaint?

MS. DENNISTON: The debtor acknowledges that none of the retirees received a notice and none of the retirees had claims filed. When the debtor filed the motion to terminate it treated those as if there were claims pending for those contracts, and indeed, consistent with the responses filed, we received an objection and the counterclaim.

THE COURT: Well, sure you have, you brought them in here. What are they going to do? Just say, Okay.

MS. DENNISTON: No, nobody expected them to say, Okay, Your Honor, but the debtor did not intend and in fact did not deprive them of any of their substantive rights. Those contracts are not executory. The debtor believes that under the plan language it has the right to terminate them on a post-effective date basis, and that is what the debtor has sought to do by nature of the motion that's before the Court. Under the terms of the plan, the confirmation order, the debtor believes that this Court has jurisdiction because the debtor did reserve those rights, and --

THE COURT: Where did you reserve the right?

MS. DENNISTON: To terminate the retirement plans,

that would be the section that we addressed in the context with Mr. Hylland's motion. It's section --

THE COURT: 8.6?

MS. DENNISTON: Yes, Your Honor.

THE COURT: Well, how about 10.7?

MS. DENNISTON: Just a second, Your Honor.

THE COURT: Are any of these plans covered by ERISA?

MS. DENNISTON: No, Your Honor, these are all non-qualified plans.

THE COURT: And does 10.7 in your opinion just address ERISA pension plans?

MS. DENNISTON: That's correct, Your Honor.

THE COURT: And 8.6 says that payment of any retiree benefits as such benefits may have been modified during the Chapter 11 case -- which they weren't -- shall be continued solely to the extent and for the duration of the period that the debtor is contractually or legally obligated to provide such benefits subject to any rights of the debtor under applicable law. Was that state law?

MS. DENNISTON: That would depend on the various contracts, Your Honor, and I will be candid with the Court that the contracts are governed by all kinds of different -- in fact, there were two sets of these contracts.

THE COURT: Well, as I understand your motion to

terminate these benefits, everyone of these are an individual agreement.

MS. DENNISTON: That's correct.

THE COURT: And they were executed by Montana Power Company, and then they were specifically assumed under the APA by Northwestern.

MS. DENNISTON: To the extent that they were identified on the APA schedule, they were assumed.

THE COURT: Well, and not only were they assumed, but they were being paid.

MS. DENNISTON: That's correct, Your Honor.

THE COURT: I went through your motion, there are over three hundred and some thousand dollars that you paid on these benefits since the petition date.

MS. DENNISTON: That's correct.

THE COURT: And 8.6 continues on that you've maintained two pension plans for its employees, that's the ERISA plan; okay?

MS. DENNISTON: Yes.

THE COURT: And there's no mention in 8.6 of top-hat plans or any other plans. It just specifically notes that some of these plans were unfunded or may be subject to the Pension Benefit Guarantee Corporation; right? The way I read that 8.6 is that you're subject to the applicable law. If you want to terminate these plans, you've got to do it

under state statute in another court.

MS. DENNISTON: We believe that state law would govern the terms of the termination, but the debtor's reading when it prepared the plan was that it would be able to terminate on a post-effective date basis in the Bankruptcy Court. There's no dispute, Your Honor, that if the contract is governed by Montana law that Montana law would apply to that termination.

THE COURT: What other law would apply?

MS. DENNISTON: I suppose it -- For example, Your Honor, we do have contracts that are governed by South Dakota law, but I'm not disputing that the state law --

THE COURT: Just for these gentlemen, just for these retirees.

MS. DENNISTON: That's correct. I believe that they are all governed by Montana law.

THE COURT: And you'd agreed, wouldn't you, that the plan has vested all of the property back into the debtor, the reorganized debtor?

MS. DENNISTON: I would agree that the -- yes, based on the notice of substantial consummation that's been filed.

THE COURT: And do you have any qualms with the tests that the Third Circuit laid out in Resource International about post-confirmation jurisdiction of the

Court relative to -- There has to a close nexus. They abandoned the Packard test in a related to jurisdiction and there has to be something that absolutely is stated in the plan, the way I read it, because of the facts of that case and if it's not there, then you're left with remedies outside of the jurisdiction of the Bankruptcy Court. You can't use this umbrella for everything at all times, and the reason that that comes into existence is basically the cases are pretty clear under 1141 that there just -- the estate stops unless it's specifically reserved. Now, under Resource International, that was a case where they had a liquidating trust, and the trust brought a malpractice case against PriceWaterhouse for contending that during the administration of the estate PriceWaterhouse didn't perform quite well, and the question is, they brought the complaint, the trustee brought the complaint in Bankruptcy Court, and it went up on appeal to the Ninth Circuit and the Ninth Circuit said, This hasn't got anything to do with the implementation or the consummation of the plan. There's no close nexus between this litigation and what is in the terms of the plan. And they held that there was no jurisdiction in the court and they sent the liquidating trustee walking to some other court. Just recently in this year, in the Pegasus case, which I mentioned earlier, which adopted this Resource test, you had a situation where the plan confirmed specifically

provided that a certain organization in Montana named in the plan was to provide the reclamation work at the Lortman Lang (phonetical), and the allegation in the complaint was that the Department of Environmental Quality upset that plan provision by firing these people and going on with somebody else, and therefore, the implementation of the plan was severely limited, and the Ninth Circuit said, in that case, there was a close nexus relative to the confirmation of the plan which was specifically mentioned as a duty of the company that was fired. And they dismissed it on sovereign immunity grounds but it seems to me that here you've got a situation where these people were never brought before the Court. They were never put in the plan. The plan doesn't cover any of these benefits. You continue to make the payments, and then there was a unilateral termination, and I just think that that leaves you in the Montana court.

MS. DENNISTON: Your Honor, if I can be heard briefly.

THE COURT: Sure.

MS. DENNISTON: The debtor reads the plan obviously very different. The debtor believes that based on the record made at confirmation and paragraph 8.6, that the debtor reserve the right to amend or terminate these benefits on or after the effective date, and the retention of jurisdiction provisions as --

UNIDENTIFIED SPEAKER (TELEPHONIC): Okay, come in --

THE COURT: Go ahead.

MS. DENNISTON: -- 13.1(J)(i) specifically reserves the jurisdiction of this Court -- excuse me, Your Honor, it's paren (J) close paren, to hear and determine any matters or disputes respecting the debtor under §s 1113 or 1114 which deal with the termination of retiree benefits. The debtor was -- and the debtor has argued that they don't apply but that they are retiree benefits, and the reason for that has been throughout the process the debtor was trying to determine what was the most appropriate thing to do with these non-qualified plans. So, the debtor thinks that it did retain the jurisdiction of the Court by specifically reserving the right to amend or terminate the benefits, these top-hat contracts prior to or after the effective date. The debtor doesn't dispute that Montana law applies. What the debtor does dispute is that because these deal with claims in the nature of what rights arise if the contracts are terminated that it is closely tied to the adjudication of the claims against the estate, and that under the way this plan was prepared, that it contemplated a post-effective date termination. And so, we believe that it's got a close nexus to the adjudication of the claims, and that this Court still has jurisdiction over the top-hat contracts.

THE COURT: Well, just as a matter of interpretation of 8.6, it says that including without limitation the debtor's right to amend or terminate such benefits prior to or after the effective date.

MS. DENNISTON: That is correct.

THE COURT: It doesn't tell anybody where you have to take that action.

MS. DENNISTON: I would concede the point, Your Honor. That was not the debtor's intention as reflected by the retention of jurisdiction section.

THE COURT: The plan binds everybody. It binds the retirees. It binds all the creditors who are known, or unknown. But, it disturbs me that none of these people ever got notice. They had no right to bout. Had no right to come forward and say, Are we in this plan? They were just passed right on through. It's kind of like the situation in Chapter 7 where you've got an outstanding mortgage and nothing's done during the 7, and the law is very clear that that passes right through unaffected. I see a similarity there. And when they were first mentioned and then amended out and not scheduled, not a part of any Schedule F -- only one of them were included as I understand it in Schedule G under executory contracts. And if they were executory contracts -- I think that's an open question, because as I read your memo in the motion there was a quid pro quo of them getting this

extra benefit -- cooperation, keep your mouth shut about some confidential matters, and things like that. That may be enough to bring it into an executory position, and if it is, then nothing that was done by this company during the reorganization to reject them, and so, you're bound by their assumption because if you didn't reject it, you didn't create the cure amount, and therefore, you didn't create -- put these creditors, if they were creditors, into Class 9 in order for them to be able to determine whether or not they can take the stock in lieu of cash. They never had that opportunity. Now, I don't see how you can back them into the Class 9 now after the fight that went through about the Magten dispute. I don't know how that's going to effect -- Class 7 comes in here and says, Wait a minute, you're deleting what we're going to get eventually because you're -- We never gave them anything. That was no part of the gift. So I just think that you've got a long way to go to -- I would be afraid that if I said I'm going to hold onto this thing and decide it and it went upstairs, it would go upstairs, I don't think the Third Circuit would have any question that this is not, number one, due process; number two, it has no effect on the implementation or the consummation of the plan; and number three, the debtor's out there now being vested. They're on their own. They're a reorganized company and whatever their obligations are after

the consummation of this plan, they have to deal with it somewhere else.

MS. DENNISTON: Thank you, Your Honor.

THE COURT: Mr. Edwards?

MR. EDWARDS: Your Honor, based on what Northwestern's counselor said there, I believe the record needs to be further augmented. She said that this termination is in the best interest of the company. Now, I have marked as Exhibit 3 and would seek permission to bring it before the Court and get a copy to counsel here -- Your Honor, this is the 10(k) from the Montana Power Company in 1999. What it does is speak the truth. The Montana Public Service Commission allows us to include in rates exactly these pensions. I seek permission for Exhibit 4 which is the 1998 Annual Report to Shareholders of the Montana Power Company and on the second page of Exhibit 4, the retirement plans, again they note that the PFC of the Montana Public Service Commission allows the company to include in rates all utility costs on the actual basic provided under these retirement plans. As we sit today and as we note in that August filing, which I believe was Exhibit 2, we can see within the context of that that there was an agreement reached between Northwestern back in July of 2004, Your Honor, and there is contemplated a rate hearing held on or before September the 1st of 2006. But as we sit now, and I

think that's why the top-hats were struck out in that exhibit in August of 2004, because they reached that agreement. These pension plans of these gentlemen are being paid for, ironically enough, by them. They have their pension plans slashed but every month when they faithfully write their check to Northwestern, they're being charged for their own retirement plans that they ain't getting. Now, that's not right, and that is an additional factor that I think shows that this Court has no jurisdiction. It is not in the best interest of the company. It is only in a gravy instance of this company. They're getting -- the rate payers in Montana are paying for these retirement plans that have been slashed.

THE COURT: I don't know that.

MR. EDWARDS: These contracts were --

THE COURT: Let me just tell you why. There was extensive negotiations which occurred during this reorganization with the Public Service Commission and this debtor relative to the rate of return and how long it was going to continue, and my recollection of the evidence that I took last month was that this rate of return was fixed at somewhere around 8 percent or something of that nature, and it was then going to be reevaluated by the Public Service Commission in 2006. I don't know if that agreement that was made with the PFC that was the bottom line for the funding of this for the reorganization ever considered any of these

matters. I don't know that. I don't think that you can say that it may have carried through. After all, Montana is still deregulated. What jurisdiction there may be over this company down the line relative to rate bases is still an open question.

MR. EDWARDS: The point, however, that I want to make --

THE COURT: You're saying that this carried through and the point is that the Montana Power Company did put this into the rate base. It was acknowledged by the PSC and --

MR. EDWARDS: And that was purchased by Northwestern.

THE COURT: -- and that was bought by Northwestern.

MR. EDWARDS: And that is my point, Your Honor.

THE COURT: Right.

MR. EDWARDS: And I would ask that the Court with all due speed --

THE COURT: I don't think --

MR. EDWARDS: -- grant our motion.

THE COURT: Yeah. I don't think that this issue is refined enough relative to this rate base issue in light of what happened during the reorganization.

MR. EDWARDS: And I guess the --

THE COURT: I don't think that really affects the jurisdiction issue anyway.

MR. EDWARDS: Right, because we are here on the jurisdictional issue, and we ground our motion on the jurisdictional but when that argument was made I felt compelled to point out what they bought was Montana Power contracts that the PSC had approved the rate payers to pay for.

THE COURT: But I've got to be somewhat careful that I don't write something into this jurisdiction order that another court down line in the state court says it's already been decided.

MR. EDWARDS: Yeah. We are here on --

THE COURT: When the issue hasn't been framed.

MR. EDWARDS: Yeah. We are here on the basis of jurisdiction. There's no jurisdiction, no due process, and that is the basis, and we ask the Court to rule that there is no jurisdiction based on that as quick as possible.

THE COURT: All right.

MR. EDWARDS: Thank you.

THE COURT: Counsel.

MS. DENNISTON: Your Honor, based on that argument, I would object to the admission of the proffered exhibits 3 and 4.

THE COURT: I'm going to sustain that because I really don't think that goes to a jurisdictional matter. I think that goes to matters that can be properly raised

somewhere else about who's paying the benefits, if it's important. Mr. Sullivan, do you have anything further?

MR. SULLIVAN: Your Honor, I was only rising to comment on whether you wanted a form of order.

THE COURT: I might have to rule first.

MR. SULLIVAN: I thought you had ruled, but I -- maybe if you're taking it under advisement --

THE COURT: No, I give a lot of indications and then I go back in there and I think I was wrong, and I might change my mind, but I don't think I will on this one, but I've got an order -- I'll have an order prepared and hopefully I can get it out before I leave here Thursday.

MR. SULLIVAN: Thank you, Your Honor.

THE COURT: All right, that concludes the hearing on -- and that order will probably cover Mr. Hylland's --

MR. DEMMY: I was just rising to see if the same title would apply to other matters that Your Honor took under advisement. I was arguing the Hylland SISP matter.

THE COURT: Yeah.

MR. DEMMY: Thank you, Your Honor.

THE COURT: Now, we'll take up the fees matters. Mr. Smith, are you still there?

MR. SMITH (TELEPHONIC): Yes, Your Honor, I'm here.

THE COURT: Which one do you want to start with first?

MR. AUSTIN: Your Honor, Paul Hastings can go first.

THE COURT: We'll start with your application?

MR. AUSTIN: Yes, Your Honor.

THE COURT: I've had an opportunity to read the 72-page auditor report which included the responses and other details.

MR. AUSTIN: Your Honor -- For the record, I'm Jesse Austin, counsel to Northwestern but at this point I'm appearing on behalf of my law firm Paul Hastings Janofsky & Walker with respect to presenting for approval what is officially titled the Fifth Quarterly and Final Fee Application for Services Rendered and Expenses Incurred in Northwestern's Chapter 11 Proceeding in Our Capacity as General Lead Bankruptcy Counsel for Northwestern. I have a relatively short presentation, Your Honor, if you'd like me to proceed with that.

THE COURT: Go ahead.

MR. AUSTIN: All right. Your Honor, this is the last of the major professional fee applications to be presented for final approval in Northwestern's Chapter 11 case. Heretofore, this Court has approved final fee applications presented by the debtor's local bankruptcy counsel, Greenberg Traurig, various special counsel to the debtor for example the Browning, Kaleczye firm and the

Creditor Committee's primary local and special counsel respectively Paul Weiss, The Bayard Firm, and energy regulatory counsel out of Washington, D.C. The application covers a period from September 14th, 2003 through November 1, 2004. The total fees cover, as adjusted, and I will speak to the adjustment in just one minutes, seek approval for final amount in the dollar amount of $13,574,871.45 and seeks approval for expenses covered, as adjusted, in the amount of $881,851.31. When I speak by the adjustments, what I'm referring to, Your Honor, is that except for one of the adjustments suggested by Mr. Smith as the fee examiner, Paul Hastings finds acceptable with the comments, the one adjustment, and we're willing to make all the adjustments that the fee examiner has proposed. The one adjustment that we do dispute, and I'll address in a second, is the adjustment of the fee examiner essentially seeking about a $75,000, what I call a case adjustment fee to the total fees and expenses. Pursuant to the administrative order entered by Judge Case in this Chapter 11 case in October, at this point a hundred percent of the expenses have been paid, but only approximately 80 percent of the fees so that if the application as adjusted is approved, Northwestern would be able to pay to Paul Hastings the holdback amount which is approximately $2 million, and that amount has been outstanding to our law firm since on or about November 1.

This application, Your Honor, as all prior applications from our perspective and as I've stated in support of affidavits for the application complies with the provisions of the Bankruptcy Code, the Rules of Bankruptcy Procedure, the Local Rules of Delaware, and the U.S. Trustee Guidelines. Other than objections from Magten, there have been no objections or comments filed that I'm aware of with respect to the application regarding compliance issues. Other than objections from Magten, there have been no serious objections submitted as to the reasonableness or necessity of the fees for services rendered and expenses incurred. Ms. Steingart this morning used a number of adjectives relative to actions taken by the debtor with respect to its client. Frankly, we find at this stage in this proceeding that this is just one more example of Magten's litigation scatter-gun shooting in an effort to further derail the progress of the debtor's case and the closing of this case and to try and penalize my law firm as the one who has been front and center in moving this case through this Bankruptcy Court on what we certainly believe to be an efficient and expeditious manner. Subject, as I noted, Your Honor, to the adjustments suggested by the fee examiner, Paul Hastings submits that the application should be approved. We recognize that irrespective of the no value being able to be distributed to the equity holders because of the valuation and absolute priority rules do not

allow for such, that Paul Hastings led a very successful and timely reorganization for Northwestern. As the evidence showed in connection with the confirmation hearing, there was significant effort extended pre-Chapter 11 both by the debtor's principals, its financial advisors, and Paul Hastings in an attempt to preserve some value for equity. Unfortunately, that simply was not to be. Once the decision was made to file Chapter 11, Paul Hastings led the company's efforts to expeditiously and economically enter and exit Chapter 11 with the reorganization structure that would return the company to an investment grade credit rate. Those goals were achieved in record time for regulated utility. If you compare this Northwestern's case, for example, to Public Service of New Hampshire, Columbia Gas, Pacific Gas and Electric, Your Honor, this case got in and out in approximately a thirteen-month period. We believe the success of the efforts are evidenced by Northwestern's recent pay-down of senior debt by approximately $25 million, the company's recently establishment of an annual cash paying dividend of its stock at 80 cents a share, and the fact that Northwestern's common stock has consistently been trading at $28 per share over the last few months, which is a 40 percent premium over what was otherwise forecasted plan value of such stock at $20 a share. Your Honor, I can go through a number of things that we believe highlights what was accomplished in

this case. I think first and foremost one of the most critical points that was accomplished was on the very first day which was to insure payment to critical vendors such as energy and gas suppliers that assured that Northwestern had energy and gas to supply to its consumers, specifically customers in Montana. Separately, on the first day, we were able to obtain court approval from payment of all employee wages that fell within the gap period between the last pay period and the Chapter 11 filing, and lastly, we obtained approval on that day of interim financing in the form of $100 million DIP loan. Following that up in October, we obtained further approval of critical energy supplies to assure no interruption of energy to consumers and then obtain final approval of the DIP such that within the first 60 days the company had available liquidity to operate its business. It had sustainable energy supplies to its customers, and based on its liquidity position was able to pay a hundred percent of its Montana property taxes which was not an insignificant dollar. Thereafter, during the mid-point of the case, the company was able to maintain and keep current all of its pre-petition senior secured debts. So that left one less creditor class with whom the company had to deal with. We were able to negotiate an interest reduction on the $390 million CSFB loan that saved the company almost $8 million in interest carrying costs. The company continued to build

liquidity and frankly, during the course of the bankruptcy proceeding never had to draw on the DIP loan. Beginning in December we effectively entered into or completed negotiations with the Creditors Committee to develop the outline of the reorganization plan which was going to provide effectively for the conversion of all the senior debt and subordinated unsecured debt to equity, not knowing at least at that time, how much was going to be the equity split between the senior unsecured bondholders and the subordinated bondholders. We couldn't have developed that until we then finalized -- the company then finalized the five-year business plan to support a reorganization plan, all of which was presented to the Committee in early February 2004. During this period, we worked with the company and helped bring before this Court a negotiated settlement in environmental liabilities with respect to the Milltown Dam, which effectively reduced a filed claim of $150 million from ARCO and other environmental protection agencies to approximate $10 million relative to the debtor's estate. In February 2004, we along with principals of the debtor, negotiated a settlement of the securities class action litigation which resulted in resolution of that litigation but with no cash payment or any other payment coming from Northwestern. Following the negotiations with the Committee, the debtor was able to timely file a disclosure statement and

plan by March 14th, which was within only one extension of the exclusivity period. And in May 17th, we obtained approval of the disclosure statement and began the solicitation process. During what I would define to be the confirmation process, the debtor and we, as lead, finalized a resolution of issues with the Montana Public Service Commission and the Montana Consumer Council, which resulted in inclusions of those provisions and stipulation into the reorganization plan and the central focus of those negotiations resulted in two things: One, it stabilized the rates through 2006 that would otherwise be charged from Montana consumers and also resolved an involved financial investigation initiated by the Montana Consumer Council before the Montana Public Service Commission. And as this Court has tried to struggle with jurisdictional issues today, I can assure you that it also resolved significant jurisdictional issues between who was getting ready to tell whom as to whether that financial investigation could or could not go forward as between a debate between Judge Case and the Montana Public Service Commission. Separately, we worked with management to negotiate a settlement of a McGreevey class action litigation, which is now hopefully trying to proceed to final approval before Judge Hadden (phonetical) in Montana, assuming we also obtain approval ultimately before this Court upon finalization of settlement

documents. We also -- During the confirmation process was able to work with the Committee in negotiating a settlement with Harbert Stress Investment Management and Wilmington Trust, the indenture trustee for the Toppers whereby the Class 7 was able to support the plan, the senior unsecured notes, and the Class AA which were the Toppers voted to support the plan. This settlement led to a modification and re-solicitation on the votes on the plan, but one significant point, Your Honor, is that as a result of those negotiations there was increased distributions out to both the Toppers and to the Quips although as controlled by Magten the class of the Quips effectively did not accept that increased distribution. We began confirmation hearings in August, and frankly, but for the re-solicitation of the votes on the modified plan, we may have been able to have gone effective in September which would then have basically been able to exit Chapter 11 in twelve months. The confirmation hearing was concluded in early October over Magten and Law Debenture's objections, I might add. The reorganization plan was overwhelmingly supported by all impaired classes of creditors except for Magten and other similarly situated Quips holders in Class 8-B. The plan confirmed on October 19, which two highlights of that, Your Honor, is that there was no interruption in service to consumers and there was no forced layoffs of employees. All the jobs effectively were

preserved through this Chapter 11 process. And the final highlight, I would submit, Your Honor, is that on the effective date and in connection with going effective the debtor was able to refinance and pay off and then rent two loan agreements, but it paid off its $390 million CSFB facility and the $100 million DIP loan with the company emerging with a little over $800 million in senior secured debt with extended maturities in excess of five years at average interest rates approximately 2 percent lower than pre-Chapter 11. And it also has liquidity of a combination of cash and available credit lines in excess of $100 million. The point of this, Your Honor, is that all in all, we certainly believe that this was a successful Chapter 11 proceeding, and that Paul Hastings' services rendered and expenses incurred on behalf of the debtor were reasonable and should be approved as stated in the application. The comments and objections to the application have been submitted by only two parties in interest. First, the fee examiner and secondly Magten Asset Management Corporation. Notably, neither the U.S. Trustee or the Official Committee of Unsecured Creditors have any comment or objections to the applications as presented. With respect to the fee examiner, Your Honor, the fee examiner with respect to this application requested total adjustments of approximately $45,790.30. As I previously noted, Paul Hastings accepts

those adjustments. The fee examiner has also requested a case adjustment of approximately $75,694 which effectively represents a write-off of time for those attorneys that we called upon on a very limited specialized basis that may have billed less then I believe 10 hours in the case. As I noted, we agreed to make all of the designated adjustments except for this final case adjustment. We think here, Your Honor, that we oppose such adjustment. There's no legal basis to support such request. We submit that we were very efficient in use of personnel on the reorganization and a blanket case adjustment is unnecessary. I note, for example, I was just quickly reviewing the Exhibit 6, I believe, that's filed to our response to the Magten objection, and just with -- We expended approximately 40,000 legal hours in work on this case. I know personally, I worked approximately 2,600 hours on it. I note that during the course of the case I traveled on behalf of Northwestern over 200,000 air miles to deal with the far ranging prospects of this case. Ms. Denniston billed over 2,600 hours, 2,700 hours. When I looked at the core bankruptcy team as it related to 40,000 hours, the core bankruptcy team which was made up of approximately only six people put in approximately 13 to 14 percent of the total time expended. We think under the circumstances, Your Honor, we went to different people to ask specific questions and in this particular instance a blanket case adjustment is not

necessary or otherwise required, and we believe that and ask that this portion of the fee examiner's objections be overruled. I'll go ahead and address Magten's objections, Your Honor, as we summarize them. Magten's objections are based on mischaracterizations and misstatements, and we argue that its objections should be overruled. First, Magten asked this Court to delay ruling on the application until Magten's appeal to the order denying its motion to disqualify is decided. Frankly, Your Honor, there's no basis at law for this, and they don't cite any cases in support. Essentially what Magten is asking is for a stay pending appeal when it's never previously sought such a stay as to its appeal of the order denying Magten's disqualification motion. With no stay in place, and on that point, Your Honor, Magten did not come before this Court and did not go before the District Court seeking any stay of that order. So with no stay in place, this Court should deny this portion of Magten's objections and allow the application and payment of the whole back amounts to be made. The second and probably more important, Your Honor, is that Magten mischaracterizes and mistakes Paul Hastings' role as counsel to Northwestern. Magten wants to argue it appears that because Paul Hastings said that it was stepping down as to counsel on matters related to, quote, "the Magten adversary proceeding", close quote, that we should not have done anything else that in any way

congenially involve a question about the going flat or a fraudulent conveyance. This is what Magten specifically misreads because in our affidavits and in the top documents we submitted, Your Honor, the Magten adversary proceeding was a specifically defined piece of litigation. It was at Adversary Proceeding No. 04-53324-CGC and is what is generally referred to as a going-flat transaction. At no point -- and Magten was clearly aware of this -- at no point did Paul Hastings ever say that it was stepping down as general and lead bankruptcy counsel for Northwestern. Magten was well aware of this and raised no objections to Paul Hastings continuing to provide services and incur expenses as lead bankruptcy counsel would. We, for example, obviously led the fight in the confirmation process, getting the disclosure statement approved, and addressing other creditors' claims. Magten was well aware that Paul Hastings was lead counsel with respect to the confirmation process and issues and was also aware that we were counsel dealing with claims of other parties in interest, such as the McGreevey claimants and Comanche Park. It would be totally inappropriate for Magten now to come in and raise objections to the services performed and expenses incurred by Paul Hastings. We submit that if it had a problem with the role we were continuing to play as lead and general bankruptcy counsel to Northwestern, the time to do that was at the time

these services were being provided not now. We recognize that this is an interim application, but at that point, Your Honor, the test we believe should only judge whether the fees we rendered were reasonable not whether we should have done them at all. If Magten complains about us doing them at all, they should have raised those objections when the interim applications were filed, and those applications were submitted on a monthly basis and clearly identified what we were doing in this bankruptcy case. The fact that Magten has overplayed its issues on appeal of the confirmation order should not penalize Paul Hastings for successfully and reasonably fulfilling its role as lead bankruptcy counsel to Northwestern. As a result, Your Honor, we ask that this application be granted, that the objections filed by Magten be overruled, and that the request for a case adjustment submitted by the fee examiner also be overruled. Your Honor, to the extent you have questions concerning our application, I am available to address them.

THE COURT: Now, Mr. Smith, let's have your comment relative to the reduction of 75,694.

MR. SMITH (TELEPHONIC): Thank you, Your Honor. I would disagree that there is not authority in the law for such a reduction, Your Honor. We included the case of Jasava (phonetical) a bankruptcy case in the Third Circuit, and I'd like to quote from footnote 9 in that case.